IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8983 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJUBHAI ISHWERBHAI GARASIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8983 of 1999

MR PH PATHAK for Petitioner No. 1

Mr. KL Pandya, AGP for Respondent No. 1-3

RULE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 12/09/2003

ORAL JUDGEMENT

Heard Mr. Pathak, the learned advocate appearing

for the petitioner and Mr. Pandya, the learned Assistant Government Pleader who is appearing for the respondent authorities. In this petition, the petitioner has challenged two orders. One is the order of punishment dated 21st September, 1998 which is at page 13 wherein the punishment of removal from service has been imposed by the DSP Valsad and the another is the order passed in appeal by the appellate authority on 29th June, 1999 wherein the appeal of the petitioner against the order of removal dated 21.9.1998 has been rejected by the appellate authority.

This petition was admitted by this court by issuing rule thereon by order dated 27th December, 2000. The respondents have filed their reply to the present petition.

As per the facts of the present petition, the petitioner was working with the respondents as unarmed police constable and had completed long service with the respondents. It was alleged against the petitioner that he remained absent without prior permission of the authority for a period from 8thNovember, 1994 to 12th October, 1995 for a period of about 339 days in all for which he was served with a charge sheet on 22.10.1996 wherein it has been alleged against him that (1) he remained absent without prior permission for a period of 339 days continuously and (2) he is having habit to remain absent without prior permission in past and, therefore, he was served with the charge sheet wherein it has been clarified that in past, for 23 times, the petitioner had remained absent without prior permission of the authority and for that some minor penalties were imposed against the petitioner in past by the department. On the basis of the charge sheet, departmental inquiry was initiated against the petitioner and the report of the inquiry officer was submitted on 29.11.1997 and, thereafter, the petitioner was served with the notice to show cause on 18.6.1998 which was replied by the petitioner on 21.8.1998. At this stage, it is required to be noted that in reply, the petitioner has made only two request for consideration of the respondent authorities that that in view of the gravity of the alleged misconduct of remaining absent without prior permission and also having past record about similar misconduct, punishment of removal is harsh and unjustified and he also suggested about his poor economical condition and, thereafter, the petitioner was personally heard by the competent authority on 9.9.1998 and ultimately the competent authority passed order of removal against the petitioner against which appeal was

preferred by the petitioner which too was rejected by the appellate authority wherein it was pointed out by the petitioner that for the period of his absence of 339 days, the competent authority has sanctioned leave without pay, meaning thereby his leave has been sanctioned for unauthorized absence. This fact was highlighted by the petitioner in his appeal before the appellate authority by relying upon the judgment of the apex court and other judgments. Detailed reply was filed by the petitioner and it was requested to consider his economical condition and the compelling circumstances of ill ness and the adverse family circumstances for which he was compelled to remain absent for 339 days without prior permission. He also suggested in appeal that because of the illness, he was remaining absent from duty which was justified by the certificate of his fitness produced by him at the time of joining after remaining absent for 339 days. and on that basis, he was granted leave without pay for the said period by order dated 21.10.1995 and that order has been noted in his muster roll by the competent authority. The appellate authority passed an order on 29thJune, 1999 and considering the appeal, it has concluded that the charges levelled against the petitioner have been found to have been proved by the inquiry officer and also considering his past record, wherein misconduct of similar nature were committed and he was punished in past, there is no scope to modify the order of punishment and, therefore, the appellate authority rejected the appeal. The petitioner, therefore, filed the present petition before this court.

Considering the affidavit in reply filed by the respondents, it appears that the petitioner abandoned his duty from 8.11.1994 without prior permission or leave from the competent authority and he remained absent till 12.10.1995, for total 339 days. Same period was regularized by the respondents as leave without pay. There is administrative procedure and rule of reducing 1/10th period of the leave without pay from the leave account of the concerned employee and as such, this reduction has nothing to do with the departmental proceedings. It is the administrative matter alone and, therefore, it cannot be said 30 days were reduced from the leave account of the petitioner as a penalty. In reply, it has been made clear that in the charge sheet, two allegations were made one is to remain absent without prior permission for 339 days continuously and also remaining absent in past and, therefore, it was his willful absence from the duty. The respondents have also clarified that in past, absence of the petitioner was regularized by sanctioning any kind of leave as there is

no provision in administrative procedure to allow absence period untouched and, therefore, administrative authority was having no option but to pass the orders to that effect. The deponent has submitted that as the competent authority in this case namely the DSP was not having the option of allowing the absence period untouched and he was bound to sanction some kind of leave and further because the petitioner abandoned his duty without permission from competent authority, some kind of departmental action was must considering the ensuing departmental proceedings in mind and administrative need of regularizing the period of absence, he regularized the period of absence as LWP which results into breakage of service. The deponent has submitted that thus the regularization of period of absence as LWP was the administrative necessity and it does not create any bar on further proceedings of departmental enquiry. It has also been submitted that had the then superintendent of Police sanctioned the EL, it could have been seen as an absent and the penalty of fine was imposed on more than one occasion but he failed to show the improvement and, therefore, ultimately for the present misconduct, penalty of removal was imposed. The deponent has also submitted that the relief prayed for by the petitioner would not only encourage the petitioner to commit the same kind of misconduct but would also adversely affect the discipline in the police force. The allegations as regards violation of the principles of natural justice were denied and the proceedings were properly held and the authority has rightly imposed the punishment of removal and no interference is necessary because this punishment order was passed by the disciplinary authority after considering the long absence of 339 days continuously without prior permission and also after considering the past record wherein the petitioner had committed similar type of misconducts for about 23 times wherein he was punished with minor punishment 12 times.

During the course of hearing, it was submitted by the learned advocate Mr. Pathak that for unauthorized absence of 339 days, the petitioner was put in awkward drill. He also submitted that after completion of the unauthorized absence, the petitioner had reported and resumed the duties on 12.10.1995 and he remained in service upto the date of removal i.e. 21.9.1998 and during that period, there was no any misconduct alleged by the respondents against the petitioner. However, that aspect has not been considered by the respondent authority while considering the quantum of punishment. It was also submitted by him that no doubt misconduct was committed by the petitioner but that was the result of

some adverse family circumstances which had compelled the petitioner to remain absent and as he was unable to ask for any permission, he, after resuming the duties, submitted fitness certificate and he was allowed to resume the duties by treating such period of unauthorized absence as LWP and in view of that, the respondent authorities were not justified in imposing such harsh and extreme punishment of removal from service considering the long span of services rendered by the petitioner. According to him, removal from service ultimately ruined not only the petitioner but his whole family would be ruined and, therefore, it is an economic death penalty and, therefore, it is harsh, unjustified and shockingly disproportionate looking to the misconduct in question and, therefore, he requested for directing the respondents to reinstate the petitioner while imposing some major punishment other than dismissal or for directing the respondent authorities to reconsider the matter as regards punishment by declaring that the punishment of removal is harsh and unjustified.

It was also emphasized by the learned advocate Mr. Pathak that since the leave has been sanctioned by the department for the period for which he remained absent unauthorizedly and in view of that, the charge sheet itself is bad and no punishment could be imposed on the basis of such charge sheet. He relied upon the decision of the Court of Judicial Commissioner, Goa Daman and Diu in Special Civil Application (Writ) Petition No. 23 of 1974 dated 7.2.1978 in the matter of Tito Francisco Pereira versus Administrator of Goa Daman and Diu and others reported in All India Services Law Journal 1978 page 614. It was also a case involving similar set of allegations namely charges regarding absence from duty were levelled against the delinquent in the said decision. The delinquent in the said matter remained absent and subsequently the period of absence was treated as leave without pay; once the leave has been granted, then, it cannot be said that the official had absented himself from duty and thereby made himself liable to be punished and, therefore, charges regarding period of absence from duty were quashed. In para 9 of the said decision, it has been observed by the Court of Judicial Commissioner, Goa, Daman and Diu that it was the accumulative effect of the absence of the petitioner on numerous occasions mentioned in the charge that weighed in the mind of the then Lt.Governor while passing the order dismissing the petitioner from service. It has also been observed that the absence on all those occasions except four has been regularized.It has also been observed that it cannot be said that the then Lt.

Governor would dismiss the petitioner even on account of his absence on the four occasions mentioned above; the case will have therefore to be remanded to him with a direction to reconsider the punishment to be awarded to the petitioner.

Learned advocate Mr. Pathak also relied upon one decision of this court in the matter of Bhursinh Hamsinh Rajput versus State of Gujarat and another reported in 1982 (1) All India Services Law Journal page 697. I have considered said decision. It was a case of removal from services on the allegation of absence without sanction of leave; leave of the same period was found sanctioned as leave without pay; plea of disciplinary authority was that the action sought to be taken against him was on the ground of negligence of duties. It was held by this court that such a plea of the disciplinary authority was not tenable. It was also held by this court that once the leave is sanctioned of whatever character, it might be the sting from that absence is taken away. As regards the punishment, order of removal, it was held that the order of dismissal on the allegation of absence from duty after over looking by the disciplinary authority the medical certificates submitted by the charged official was vitiated. It was also a matter of the armed police constable.

Learned advocate Mr. Pathak has also placed reliance on the decision of the apex court reported in 2002 II CLR 16 in the matter of State of Rajasthan and others versus Sujata Malhotra. It was a case of termination of service. Employee concerned remained absent for long period from 1983 to 1987. After domestic enquiry, High Court held termination of the respondent to be grossly disproportionate and directed reinstatement with 50 per cent back wages and the matter then went before the apex court. The order of reinstatement was not interfered by the apex court but the order granting 50 per cent of the back wages was set aside by the apex court.

After relying upon the aforesaid judgments, it was submitted by the learned advocate Mr. Pathak that considering the gravity of misconduct of remaining absent for 339 days, the order of removal from service is harsh and extreme punishment since the leave has been sanctioned for such unauthorized absence. He also submitted that considering the past, minor punishments were imposed and, therefore, while considering the quantum of punishment for similar misconduct of remaining absent, the respondents ought to have considered the

matter for the major punishment other than that of dismissal from service looking to the compelling and adverse family circumstances of the petitioner.

On the other hand, learned advocate Mr. Pandya submitted that considering the past record of the petitioner, the respondent authorities were having no option but to pass the order of dismissal as the petitioner has not shown any improvement and, therefore, there is no substance in this petition. As against that, it was submitted by the learned advocate Mr. Pathak that in past, minor punishments were imposed while condoning the past misconducts and, therefore, now instead of dismissal, some other major punishment may be imposed so that the petitioner may have an opportunity to show improvement. He submitted that because of the compelling circumstances, the petitioner had remained absent and after he joined in the year 1995 and till he was removed from service, there was no allegation of similar misconduct for the said period and, therefore, this court should exercise its power under Article 226 of the Constitution of India.

I have considered the submissions made by the learned advocates for the parties. Most of the facts are not in dispute between the parties. It is an admitted fact that the petitioner remained absent for 339 days as alleged. It is also an admitted fact that in past, for 23 times, he committed such similar type of misconducts wherein he was punished with some minor punishments and the occasion has arisen for the first time to consider the matter for major punishment. Admittedly in past, he was not visited with any major punishment. Keeping in view these admitted facts and also keeping in view the gravity of such misconduct committed by the petitioner while keeping in view the compelling and adverse family circumstances of the petitioner, according to my opinion, some major punishment other than that of dismissal ought to have been considered by the respondents. The question is that the petitioner who is having long service has been removed from service by the department only on the ground that he remained absent from duty for 339 days without prior permission of the authority concerned. Whether the respondents are justified in imposing such harsh and extreme punishment or not is the question for this Court's consideration. I myself have perused the order of punishment passed by the disciplinary authority as well as the appellate authority. Relevant criteria are to the effect that before passing such an order of punishment namely order of removal from service, it is the duty of the disciplinary authority to consider

certain relevant factors namely length of service of the delinquent; compelling or adverse circumstances due to which the delinquent had remained absent from duty; socio-economic back ground of the delinquent and the effect of the harsh and severe punishment. These are the relevant considerations required to be kept in mind by the disciplinary authority before passing the order of punishment of removal from service. Before passing such an extreme order of punishment, it is also necessary for the disciplinary authority to consider the effect of such harsh and extreme punishment on the not only on the delinquent but also on the family of the delinquent. These are the relevant factors and considerations which are required to be kept in mind by the competent authority while passing the order of punishment and considering the quantum of punishment. Keeping these factors in view, one question was asked by this court to the learned AGP Mr. Pandya that in past, for such similar type of misconduct, whether the major punishment other than dismissal has ever been imposed upon the petitioner or not. Learned AGP Mr. Pandya has not been able to answer that any such major punishment other than that of dismissal has ever been imposed upon the petitioner prior to the order of dismissal. However, it was the sum and substance of his submissions that as the petitioner failed to show improvement, the respondent authorities passed the order of dismissal considering his past misconducts wherein minor punishments were imposed for 12 times. Now in reply to the show cause notice, the petitioner had specifically clarified that looking to the gravity of misconduct committed by him, the punishment of dismissal proposed to be imposed upon him is harsh and his family circumstances as well as the economical conditions are not good and, therefore, it was requested by the petitioner to pass the order of some minor punishment. I have perused the order of punishment as well as the order passed by the appellate authority but there is no discussion in respect of the said contention raised by the petitioner that the punishment of dismissal is harsh in view of his adverse family circumstances. It is also necessary to be noted that before the appellate authority, it was pointed out by the petitioner that his total period of absence has been sanctioned by the competent authority by order dated 21st October, 1995 as Leave Without Pay and for the same period, the petitioner has been dismissed from service which is not just and proper and the same is illegal. That aspect has also not been considered by the appellate authority while considering the appeal of the petitioner. No doubt to remain absent without prior permission for such a long period in a disciplined force like police department is a

serious misconduct but while considering such things, it is required to be appreciated that it is having some more adverse effect if the petitioner report for duty. The petitioner remained absent for the said period in view of the adverse family circumstances and that is how he remained absent for the said period. Some time it happens that the employee may not be able to resume because of some compelling circumstances which may be subsequently justified by the employee. In the instant case also, the explanation was given by the petitioner. In light of these facts, decision of the Court of Judicial Commissioner Goa, Diu and Daman referred to hereinabove is required to be appreciated. In the decision of the Court of Judicial Commissioner, Goa Daman and Diu in Special Civil Application (Writ) Petition No. 23 of 1974 dated 7.2.1978 in the matter of Tito Francisco Pereira versus Administrator of Goa Daman and Diu and others reported in All India Services Law Journal 1978 page 614, it has been observed as under in para 5 by the Court of Judicial Commissioner :

"5. I am now considering the first point.

> The absence of the petitioner during the periods of time mentioned in the charge were treated as absence on leave without pay. The treatment of absence as absence on leave without pay amounts to granting leave. I see no difference between granting leave without pay and treating the period of absence as leave without pay. The distinction which is sought to be drawn by the learned Government Advocate is not possible. Next, it is argued by the learned Government Advocate that the absence of the petitioner was not only unauthorized but was also unjustified. He states that even if it is assumed, without admitting, that the lack of authorization is regularized by the treatment of the period of absence as leave, the lack of justification is not regularized. According to him, there is, therefore, no condonation of the fault of absenting without justification. He concludes that the unjustified periods of absence constituted infractions which called for disciplinary action and dismissal from service. It seems to me that if the absence was not justified, the period of absence could not in law be treated as leave without pay. Such period of absence would constitute break in service. Upon granting of leave without pay there can be no break in service because the period of absence is treated a period on leave. Therefore, the

granting of leave of whatever nature may be, is tantamount to considering the absence as justified or at any rate to condonation and regularization of the absence. I need not add that after such regularization and condonation no disciplinary action lies. I am entirely in agreement with the line of argument adopted in this regard by Shri Kakodar. I am supported by G. Papaiah v. Assistant Director, Medical Services, Secunderabad. The petitioner in that case absented from duty from 16th to 25th May, 1973. Subsequently, the Major Officer commanding granted 10 days extraordinary leave to regularize his intentional absence. The absence, in that case had been considered to be e intentional and unauthorized. The learned judge who rendered the judgment in that case observed that he was unable to agree with the learned counsel for the respondent that notwithstanding the grant of the extra ordinary leave to the petitioner, he could be proceeded against for his absence on duty for that period. He went on to say that whatever be the leave it was leave. When once leave is granted in respect of a particular period it must be considered that he was permitted to absent himself from duty for that period. In such a case it is not permissible or open to the employer or any other authority to proceed against the public servant for absenting from duty at the same period and to punish him. The authority should have refused to grant leave of any kind to the petitioner and then proceed to punish him after due and proper inquiry and after affording reasonable opportunity to him. Once leave has been granted, it cannot be said that the petitioner had absented himself from duty and thereby made himself liable to be punished. In the case before me charges relating to the periods of absence of the petitioner from duty regarding which sanction has subsequently been granted are not sustainable. The Inquiry Officer himself has stated in his report that the petitioner submitted an explanation for his absence stating that he was not mentally well and requested his superiors to treat his absence as earned leave. He further stated that 'his (peitioner's) absent periods are already regularized by the SP'. Therefore, the charges regarding periods of absence from duty by the petitioner which relate to those periods which have been regularized by the grant of leave must

be quashed as they are not sustainable."

Thus, in the aforesaid judgment, order of removal for absence without permission was set aside by the court of Judicial Commissioner because it was grossly inadequate and was against the principles of natural justice.

The second decision of this court in the matter of Bhursinh Hamsinh Rajput versus State of Gujarat and another reported in 1982 (1) All India Services Law Journal page 697 has been considered by this Court. It was a case of removal from services on the allegation of absence without sanction of leave; leave of the same period was found sanctioned as leave without pay; plea of disciplinary authority was that the action sought to be taken against him was on the ground of negligence of duties. It was held by this court that such a plea of the disciplinary authority was not tenable. It was also held by this court that once the leave is sanctioned of whatever character, it might be the sting from that absence is taken away. In para 1,2 and 3 of the said judgment, it has been observed as under:

"1. This is a petition by one Armed Police Constable, who had joined the employment of the respondent State in Mehsana District on 11.4.64.On 18.12.75 in the second part of the day, he was alleged to have remained away from duty and thereafter from 18.12.75 to 22.12.75 and then upto 4.1.76 because of his illness, as he says, he could not attend to his duties. The District Superintendent of Police, Mehsana had therefore issued the chargesheet against him on 29.10.76, which culminated ultimately in the second show cause notice at Annexure A. The petitioner had given his reply, Annexure B, and thereafter the DSP passed on 13.12.76 the impugned order, Annexure C, dismissing him from service. The petitioner preferred appeal before the Deputy Inspector General of Police, Gandhinagar, who by his order Annexure D, dated 6.6.80confirmed the order of dismissal by dismissing the appeal as time barred.The petitioner then invoked the revisional jurisdiction of the Inspector General of Police who by his order Annexure E dated 5.3.81 replaced the sentence of dismissal by that of removal. The petitioner has, therefore, moved rounded off by the order Annexure E and directing the respondents to reinstate the petitioner with full

back wages.

2. The order, Annexure C, gives the facts of the charge and it requires to be read closely. The first charge against the petitioner was that on 18.12.75 he had absented himself from duty in the afternoon, without any previous leave sanctioned and that he had continued to absent himself without any leave sanctioned for the period upto 4.1.76. The DSP states that the petitioner's grievance about his illness could not be believed only because he had not approached the higher officers on the following day when the PSI had refused to give him sick leave memo. The petitioner states that he could not get the treatment at Government Hospital at Patan on 19.12.75, because no new case could be registered at the government hospital in the afternoon. The approach of the DSP in this connection appears to be absolutely too rigid, but I would not base my judgment on this question because this is essentially a question of fact and appreciation of evidentiary material.

3. The petitioner's next contention deserves to be closely examined. The petitioner's leave was sanctioned for the period from 18.12.75 to 4.1.76 as the leave without pay. The DSP admits this fact and still allegation against him is that he had absented without leave being sanctioned. The reason put forward is that it was an administrative order, whereas the action sought to be taken against him was on the ground of negligence of duties. Once the leave is sanctioned of whatever character it might be the sting from that absence is taken away. So the finding of the DSP on this score proceeds against the admitted facts and on this ground, the order cannot be allowed to stand."

In the third decision relied upon by Mr. Pathak reported in 2002 II CLR 16 in the matter of State of Rajasthan and others versus Sujata Malhotra was a case of termination of service; Employee concerned remained absent for long period from 1983 to 1987; after domestic enquiry, High Court held termination of the respondent to be grossly disproportionate and directed reinstatement with 50 per cent back wages and the matter then went before the apex court. The order of reinstatement reinstatement was not interfered by the apex court but the order granting 50 per cent of the back wages was set

aside by the apex court.

I have kept in view the aforesaid observations. In the two decisions, the facts are identical to the facts of the present case and the employees in the said decisions were also police employees. In the judgment of the Gujarat High Court referred to hereinabove, the petitioner was police constable who remained absent and his leave was sanctioned by the department and ultimately this Court set aside the order of removal.

I have considered the facts of the present case. The petitioner was having long service; he remained absent because of some adverse and compelling family circumstances without prior permission and that leave was subsequently sanctioned means regularized by the department. Normally this court cannot interfere with the order of punishment imposed by the department unless it shocks the conscience of the court. Considering the facts of the present case, once reply was tendered by the employee with a request to the authority to consider his case for minor punishment because of his adverse family circumstances, he was compelled to remain absent having some problem in his family may not be considered to be serious misconduct and request was made to impose some minor punishment. These two aspects have not at all been examined by the disciplinary authority as well as the appellate authority while considering the quantum of punishment as well as the appeal of the petitioner against the order of removal. His repeated requests to consider the gravity of the alleged misconduct were not at all considered or examined by the disciplinary authority or the appellate authority. While considering the matter, it ought to have been appreciated by the disciplinary authority as well as the appellate authority that it was not a case of dishonesty or misappropriating of the funds of the public exchequer but it was a case of absenteeism. According to my opinion, such punishment is shockingly disproportionate and not just and fair looking to the gravity of misconduct. While imposing punishment against the employee, some reformative measures are also required to be taken into consideration. Earlier, for such similar misconducts, some minor punishments were imposed and, therefore, some heavy punishment other than that of dismissal ought to have been considered by the respondent authorities. I am, therefore, of the view that looking to the gravity of misconduct committed by the petitioner, punishment of dismissal from service is shockingly disproportionate and the same is harsh and not justified and, therefore, same is required to be interfered by this court.

In past, looking to the charge sheet, 23 similar type of misconducts were committed by the petitioner for wherein for 12 such misconducts, some punishments were imposed against the petitioner which were minor in nature. Therefore, considering this aspect and the past record of the petitioner, and also considering the compelling adverse circumstances of the petitioner for his remaining absent without prior permission, I am of the opinion that the order of punishment of dismissal is required to be interfered with by this court. It is also required to be kept in view that after remaining absent for 339 days, the petitioner resumed in 1995 and he worked upto the date of his dismissal from service but during that period, there was no such complaint against the petitioner. Further, for the period of 339 days absence, leave without pay was granted and thus that period of absence was justified by the respondents. Therefore considering the gravity of misconduct and also considering the long service of the petitioner and his past record, and his compelling adverse family circumstances, according to my opinion, petitioner is required to be reinstated in service without back wages with continuity of service.

It is a settled law laid down by the apex court that while deciding the question of proportionality of punishment needs a determination. In such a circumstances, power of the court to inquire that the punishment imposed by the disciplinary authority is extremely limited and in case of non consideration of relevant factors having some bearing on the quantum of punishment by disciplinary authority, Court can direct reconsideration of quantum of punishment in such cases and in appropriate cases, Court can also indicate punishment to be awarded. Relevant discussion made by the apex court in the matter of Kailash Nath Gupta versus Enquiry Officer (RK Raj), Allahabad Bank and others reported in 2003 Lab IC 2290, SC, in para 10 and 11 of the judgment is reproduced as under:

"10. It is also further stated in the same judgment that 'the High Court/Tribunal while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High COurt/Tribunal, it would appropriately mould the relief, either directing the disciplinary

authority/appellate authority to reconsider the penalty imposed or to shorten the litigation, it may itself in exceptional and rare cases impose appropriate punishment with cogent reasons in support thereof.

11. In the background or what has been stated above, one thing is clear that the power of interference with the quantum of punishment is extremely limited. But when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the Court can direct reconsideration or in an appropriate case to shorten litigation, indicate the punishment to be awarded. It is stated that there was no occasions the long past service indicating either irregularity or misconduct of the appellant except the charges which were the subject matter of his removal from service. The stand of the appellant as indicated above is that though small advances may have become irrecoverable, there is nothing to indicate that the appellant had misappropriated any money or had committed any act of fraud. If any loss has been caused to the bank (which he quantifies at about Rs.46,000.00) that can be recovered from the appellant. As the reading of the various articles of charges go to show, at the most there is some procedural irregularity which cannot be termed to be negligence to warrant the extreme punishment of dismissal from service."

In light of the above observations made by the apex court and considering the facts of the present case, when the petitioner had not obtained prior permission to remain on leave due to his adverse family circumstances and remained absent unauhtorizedly for about 339 days continuously, at the most, it could be considered to be procedural irregularity in not obtaining prior permission or to get sanctioned leave in advance by the employee. In past, for about 12 incidents, the petitioner was punished which were quite minor in nature. However, the disciplinary authority has not taken into account certain relevant factors including the reformative measures while imposing punishment, this Court is interfering with he order of punishment. Relevant factors are depending upon the facts and circumstances of each case. Here, in the facts of the present case, the petitioner was unarmed police constable not acted properly as per the rules and due to the adverse family circumstances, he remained absent for a long period of 339 days and his past 12

misconducts of similar nature were condoned by the disciplinary authority by imposing some minor punishments but simultaneously after long service if the adequate punishment is not imposed, then, whole family of the petitioner will be ruined for such a lapse on his part. Some time misconduct committed by an employee may because of the socio economic back ground, family circumstances and compelling circumstances. In such a circumstances, it is necessary for the court to consider whether the extreme punishment is the only punishment or is there any other option which can be considered while considering the effect of the extreme punishment not only on the petitioner but the family and the family members of the petitioner. Considering all such relevant factors in mind while keeping in view the misconduct committed by the petitioner, according to my opinion, this is the fit case to interfere with the punishment and to award reasonable punishment by way of denying total back wages of more than five years and also by imposing major punishment of stoppage of two annual increments with recurring effect while granting only reinstatement with continuity of service with a rider that in case if the misconduct of a similar nature is committed by the petitioner in future, then, it will be open for the respondents to pass appropriate order of punishment keeping in view the gravity of misconduct which may also include the extreme and harsh punishment of dismissal from service. It is also necessary to note that after the unauthorized absence from service, the petitioner had reported for work and thereafter, for a period of two years, he worked and no lapses were committed by the petitioner and there is nothing to indicate adverse to the petitioner by the respondents and, therefore, while exercising the extra ordinary jurisdiction under Article 226 of the Constitution of India, this court is having feeling that such extreme and harsh punishment is shocking the conscience of the court for the above referred reasons and apparently the punishment of dismissal imposed by the disciplinary authority is unjustified, harsh and disproportionate considering the gravity of misconduct committed by the petitioner. This Court is, therefore, interfering with the punishment imposed by the disciplinary authority.

For the aforesaid discussion, this petition is partly allowed. Order of punishment dated 21st September, 1998 passed by the disciplinary authority as well as the order dated 29thJune, 1999 passed by the appellate authority are hereby quashed and set aside with a direction to the respondents to reinstate the petitioner in service with continuity of service and

without back wages for the intervening period. Respondents are directed to impose punishment of two annual increments of the petitioner with recurring effect. Respondents are directed to reinstate the petitioner in service with continuity of service and without back wages within six weeks from the date of receipt of copy of this order. Rule is made absolute in terms indicated hereinabove with no order as to costs.

Dt.12.9.2003. (H.K.Rathod,J.)

Vyas